

# **Exhibit B**

19 VIDEOTAPED DEPOSITION OF DENNIS J. CONCILLA  
20 Wednesday, July 12, 2023  
21 9:35 a.m.  
22 Carlile Patchen & Murphy  
950 Goodale Boulevard  
Suite 200  
Columbus, Ohio 43212

24 REPORTED BY:  
SUSAN L. COOTS, RPR  
REGISTERED PROFESSIONAL REPORTER  
25 JOB No. 230712ARSI

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ALSO PRESENT:

Robert J. Mueller, via videoconference  
Phillip Park, Videographer

- - -

10:03 1 Q Up to December 2018, did you ever represent  
2 Mr. Mueller personally?

3 A No. Except to the extent that he was the  
4 principal of a company that I was representing. So as  
10:03 5 an officer of the corporation, I considered my  
6 representation to be on behalf of Policy Services,  
7 Robert Mueller, Russ Hagan, when Russ Hagan was there.

8 MS. SANSALONE: Bless you.

9 BY MS. WARDEN:

10:04 10 Q Okay. And did the scope of your  
11 representation of Policy Services, up through  
12 December 2018, change at any point?

13 A No.

14 THE VIDEOGRAPHER: Pardon me.

10:04 15 THE WITNESS: Gesundheit.

16 BY MS. WARDEN:

17 Q And do you recall Mr. Mueller ever asking you  
18 to represent him in his personal capacity?

19 MR. HULINGS: Objection to the extent that  
10:04 20 that question goes to time period after December 2018.

21 A No.

22 Q When did you stop representing Policy  
23 Services?

24 A I -- I think it's hard to put a date on it.  
10:04 25 I will tell you that by 2017, my relationship with

10:59 1 BY MS. WARDEN:

2 Q You -- you do not recall discussions with  
3 Mr. Mueller regarding placing 30 percent of investor  
4 funds into deeproot Pinball?

10:59 5 A I do recall.

6 Q Okay. And what did he tell you about that?

7 MR. HULINGS: Objection. Vague.

8 A He thought it would -- He thought that it  
9 allowed some diversification for potential cash flow.

10:59 10 Q Okay. Did you share your concern that  
11 there -- I believe you said that there could not --  
12 there was a possibility that the Fund could not pay its  
13 existing investors?

14 MR. HULINGS: Objection. Misstates prior  
10:59 15 testimony. And vague.

16 A I -- I think I expressed my general concern  
17 over his desire to put -- to move away from his core --  
18 his core structure, which -- which was to create life --  
19 a pool of life settlements as distinguished from  
11:00 20 viaticals.

21 Q And what was Mr. Mueller's response to you?

22 A I don't recall exactly. I can read what his  
23 response is.

24 Q Well, you mentioned having conversation with  
11:00 25 Mr. Mueller about this, right?

11:15 1 Q Okay. For both the dGRD and PPM -- and  
2 557 Funds?

3 MR. HULINGS: Same objections.

4 A Yes.

11:15 5 Q And what is the equity approach that  
6 Mr. Mueller's referring to?

7 A You know, I don't -- I'm not sure I remember.  
8 I -- I -- I -- I -- I think -- Well, I'd only be  
9 speculating. I -- I don't recall really.

11:16 10 Q Okay. I'm going to hand you Tab 19 which I'll  
11 mark as Exhibit 91.

12 (Deposition Exhibit 91 was marked for  
13 identification.)

14 BY MS. WARDEN:

11:16 15 Q Do you recognize this document?

16 A No.

17 Q Does it appear to be an August 12, 2015, email  
18 from you to Mr. Mueller?

19 A Yes.

11:16 20 Q Okay. You wrote, "In my mind, this is now  
21 ready."

22 And it says there's attachment of a dGRD PPM,  
23 and that appears to be attached to this email  
24 MUELLER-2650 through 2667.

11:17 25 Do you see --

11:17 1 A Yes.

2 Q -- the dGRD PPM?

3 What did you mean by, in your mind, this is  
4 now ready.

11:17 5 A I had made all changes and comments that I  
6 thought were necessary.

7 Q Okay. And so would you say the comment, "In  
8 my mind, this is now ready," were you providing  
9 Mr. Mueller legal advice?

11:17 10 MR. HULINGS: Objection. That's pretty vague.

11 A Yes.

12 Q Okay. And was -- was your comment in the  
13 email, "In my mind, this is now ready," was that based  
14 upon the information that Mr. Mueller had provided to  
15 you at that time?

16 MR. HULINGS: Objection. Vague as to "at that  
17 time."

18 BY MS. WARDEN:

19 Q You can answer.

11:17 20 A Yes.

21 Q Sorry?

22 A Yes.

23 Q And if you later learned that -- If  
24 Mr. Mueller came to you after August 12th, 2015, with  
11:18 25 new information, how would you advise him? How would

11:26 1 premiums because, as you know, it's possible."

2                   What are -- what are you referring to here?

3                   A     The -- the -- Okay. The -- the theory of --  
4                   of investing in a life settlement is that you're  
11:27 5 purchasing an interest in someone else's insurance  
6                   policy. You'll -- you'll be paid the -- the amount of  
7                   the policy upon the death of that individual. Okay.

8                   You have to set aside a certain amount of  
9                   money to continue paying the premiums. If you have set  
11:27 10 aside an in -- an insufficient amount of money, then you  
11                may have to go back to the investor to say, We need more  
12                money to continue paying the premiums to protect your  
13                investment. And that's what I'm referring to here.

14                  Q     Okay. And the -- Exhibit 94 is a draft

11:28 15            deeproot Investor Presentation. Do you recall providing  
16                legal advice on Exhibit 94?

17                  A     Yes.

18                  Q     Okay. Was your legal advice on Exhibit 94  
19                limited to the information that Mr. Mueller provided to  
11:28 20            you about the 575 and dGRD Funds?

21                  MR. HULINGS: Vague.

22                  You can answer.

23                  A     Yes.

24                  Q     And you were relying on Mr. Mueller to give  
11:28 25            you complete and accurate information, correct?

12:09 1 Q -- Investor Presentation was attached --

2 A Yes.

3 Q -- did Mr. Mueller inform you that other  
4 classes would have the same priority rights?

12:09 5 A No. Same priority rights as the Class B  
6 Shares; is that what you're saying?

7 Q Correct.

8 A No.

9 Q Okay. And if Mr. Mueller had told you that,  
12:09 10 would you advise Mr. Mueller to revise that statement?

11 MR. HULINGS: Objection. Calls for  
12 speculation. Lack of foundation. Assumes facts not in  
13 evidence. It's vague.

14 You can answer, if you can.

12:09 15 A Yes.

16 Q Okay. I'm handing you what's previously been  
17 marked Exhibit 36. It's Bates 14497 through 14512.

18 Mr. Concilla, do -- do you recognize this  
19 document?

12:10 20 A Yes.

21 Q Okay. And -- and what is it?

22 A It's a -- it's a Reg D on behalf of deeproot  
23 575 Fund.

24 Q Okay. Is it a Private Placement Memorandum?

12:11 25 A Yes.

12:11 1 Q Okay. Is that a synonym for a Reg D?

2 A Yes.

3 Q And at the bottom, do you see it's dated

4 September 1, 2015?

12:11 5 A Yes.

6 Q Okay. So I can represent to you that in

7 Mr. Mueller's interrogatory responses, he indicated that

8 Exhibit 36 that you're looking at --

9 A Yes.

12:11 10 Q -- was operative between May 2015 and

11 May 2018. So were you representing Policy Services

12 between -- at any point between May 2015 and May 2018?

13 A Periodically.

14 Q So is the --

12:11 15 A Yes.

16 Q -- answer "Yes"?

17 A Yes.

18 Q Okay.

19 A From time to time.

12:11 20 Q All right. And do you recall advising Policy

21 Services with respect to Exhibit 36?

22 MR. HULINGS: Objection. Vague.

23 A Not -- not specifically.

24 Q Do you regard -- do you recall providing legal

12:12 25 advice with respect to the 575 PPMs?

12:12 1 A Yes.

2 Q Okay. And is Exhibit 36 one of the 575 PPMs  
3 that you provided advice for?

4 A I'm -- I'm unaware of there being more than  
12:12 5 one 575 Fund.

6 Q Okay. All right. So turning your attention  
7 to Page 6.

8 A Page -- Page 6 as in the numbering pages or in  
9 the -- in the --

12:12 10 Q Sorry. That was my PDF Page 6. So 14502.  
11 Hold on. So page 6 of 13 on the bottom. So  
12 SEC-DEEPROOT-E-0014505.

13 A Yeah. Got it. Yes.

14 Q Are you aware of more than one 575 Fund PPM?

12:13 15 A I am -- I am not aware of more than one  
16 575 PPM.

17 Q Did Mr. Mueller ever tell you that there was  
18 more than one 575 PPM?

19 A I don't recall.

12:13 20 Q Okay. All right. So if you look at the  
21 bottom of Bates 14505, it -- Under the category, Life  
22 Policies, it says, "We will invest in Life Policies, AKA  
23 Life Settlements, which are sales to third parties of  
24 existing life insurance contracts held on insureds who  
12:13 25 are 65 years of age or older."

12:41 1 MR. HULINGS: Vague and misleading.

2 A Again, I -- I -- I don't know. I don't know.  
3 That's my answer.

4 Q If you had provided Policy Services legal  
12:42 5 advice regarding a new dGRD PPM around May 2018, would  
6 you have expected there to be emails between you and  
7 Mr. Mueller?

8 MR. HULINGS: So hold on. Hold on. Lack of  
9 foundation. Calls for speculation. Hypothetical. It's  
12:43 10 vague and misleading.

11 You can answer, if you can.

12 A Yeah.

13 MS. SANSALONE: What he said.

14 A What he said. Yes.

12:43 15 Yes, I would have expected there to be email.  
16 We communicated a lot through email.

17 Q Yeah. How -- Would you say email was the most  
18 frequent form of communication between you and  
19 Mr. Mueller?

12:43 20 A Yes.

21 Q Okay. And were phone calls between you and  
22 Mr. Mueller a rare occasion?

23 MR. HULINGS: Objection. Vague.

24 MS. SANSALONE: Objection. Yeah. Go ahead.

12:43 25 A I -- I -- When we were actively working on

12:43 1 something, we emailed a lot and we spoke a lot by  
2 telephone.

3 Q Okay. I'm handing you what is Tab 33, which  
4 I'll mark Exhibit 100.

12:44 5 (Deposition Exhibit 100 was marked for  
6 identification.)

7 MS. SANSALONE: We hit the big line. 100.

8 THE WITNESS: Yeah, I know. Are we allowed to  
9 go over 100?

12:44 10 MS. SANSALONE: I think there's a federal rule  
11 on that.

12 THE WITNESS: I think there's a federal --  
13 there's got to be a federal rule.

14 BY MS. WARDEN:

12:44 15 Q For the record, this is SEC-DEEPROOT-E- --

16 MR. HULINGS: I wish there was.

17 THE WITNESS: Yeah.

18 BY MS. WARDEN:

19 Q -- 0164762 through 0164780.

12:45 20 MR. HULINGS: It's fair to say the trial in  
21 this case is going to have more than 100 exhibits.

22 THE WITNESS: Wow.

23 MR. HULINGS: Thousands probably.

24 THE WITNESS: I would say. Tens of thousands  
12:45 25 of pages.

13:18 1 MS. SANSALONE: Let's -- let's move forward.

2 BY MS. WARDEN:

3 Q Mr. Concilla, did Mr. Mueller inform you that  
4 he would pay his investors in earlier funds, not the  
13:18 5 575 or dGRD Funds with 575 and dGRD investor funds?

6 MR. HULINGS: All right. So vague and  
7 ambiguous and argumentative. Assumes facts not in  
8 evidence.

9 You can answer, if you can.

13:19 10 A Money is fungible. So wherever the money is  
11 coming from, or if it's going into an account, it could  
12 be used for whatever purpose.

13 But did we have a specific discussion about  
14 what I think you're asking; paying old investors with  
13:19 15 new investor money? We did not.

16 Q Okay. I'm going to reask it because it's --  
17 it's -- that was muddy to me.

18 So did Mr. Mueller inform you that he would  
19 pay his inventors with earlier funds --

13:19 20 A I've already --

21 Q -- with 575 and dGRD investor funds?

22 MR. HULINGS: Okay. So same objections as  
23 asserted to the previous question. And asked and  
24 answered.

13:19 25 A I'm -- I'm confused. You're saying his

14:32 1 MR. HULINGS: Vague and ambiguous. Assumes  
2 facts not in evidence. Argumentative. Misleading.  
3 A Operational expenses could be nominal  
4 expenses.

14:32 5 Q Well, how -- how -- how would you define  
6 operational expenses?

7 A Again -- again, expenses that are associated  
8 with day-to-day operations. Did the electric bill get  
9 paid? Did the phone bill get paid? Those are all  
14:33 10 operational expenses.

11 Q Did Mr. Mueller inform you that he would use  
12 575 and dGRD investor funds to pay off credit card  
13 purchases for personal expenses?

14 MR. HULINGS: So vague and ambiguous. Assumes  
14:33 15 facts not in evidence. Argumentative. Misleading.

16 You can answer.

17 A No.

18 Q And just to follow up, are -- are investor  
19 payments operational expenses?

14:33 20 MR. HULINGS: Vague and ambiguous.

21 Argumentative. Calls for a legal conclusion.

22 A I think they could be.

23 Q And did Mr. Mueller inform you that 575 and  
24 dGRD investor funds would be used to pay for investor  
14:34 25 payments?

14:35 1 Q Did Mr. Mueller inform you that he would use  
2 575 and dGRD investor funds to initiate cash transfers  
3 for personal expenses?

4 MR. HULINGS: So same set of -- Well, let me  
14:35 5 repeat them. Calls for -- facts -- relies on facts not  
6 in evidence. It's argumentative. It's vague and  
7 misleading.

8 You can answer.

9 A No.

14:35 10 Q Could payments from the Company Advance be  
11 used to pay investment returns?

12 MR. HULINGS: So hold on. That's -- that's  
13 vague and ambiguous. And argumentative. And calls for  
14 a legal conclusion.

14:36 15 A Say it again, please. Could --

16 Q Could payments from the Company Advance be  
17 used to pay investment returns?

18 MR. HULINGS: Same objections.

19 A I think they could. Yes.

14:36 20 Q Like, pay the payouts at the end of the term?  
21 At the end of an investor's term.

22 MR. HULINGS: Asked and answered. Vague and  
23 ambiguous.

24 A Yeah. I'm sorry. I can't -- I don't --  
14:36 25 I don't understand the question because you're saying

15:16 1 A Yes.

2 Q So I want to clarify which -- which it is. So  
3 in the context of this -- the context of whether or not  
4 you spoke with Mr. Mueller about whether new investor  
15:16 5 funds could be used to make payments to previous  
6 investors, is your testimony today that you don't recall  
7 having that conversation with --

8 MS. WARDEN: Objection. Vague.

9 BY MR. HULINGS:

15:16 10 Q -- with Mr. Mueller? You can answer.

11 MS. WARDEN: And mischaracterizes prior  
12 testimony.

13 A I -- I think it's fair to say that I've --  
14 Again, I've tried my best. Could there have been a  
15:16 15 conversation that I don't recall? There -- there  
16 certainly could be. But on some of these issues, I just  
17 know what my answer would have been.

18 Q So Mr. Mueller have -- may have a different  
19 recollection?

15:16 20 A He may.

21 Q All right. Pull out another example. Do  
22 you -- do you recall being asked something to the effect  
23 by -- Let me rephrase.

24 Do you remember being asked by Ms. Warden  
15:17 25 something to the effect that, Did you have a

15:18 1 Argumentative.

2 BY MR. HULINGS:

3 Q You can answer.

4 A I -- I don't -- I think it's unlikely that  
15:18 5 that conversation ever took place.

6 Q All right. Ask a little bit about -- You --  
7 you just testified that it would not be proper for --  
8 Let me rephrase.

9 You were just asked questions about your  
15:19 10 Declaration. Do you recall that?

11 A I do.

12 Q And one --

13 A I remember that much.

14 Q One of the questions concerned whether or not  
15:19 15 it was proper to use new investor funds to pay old  
16 investors.

17 A Correct.

18 Q Do you recall that?

19 And you made a distinction, based on the way  
15:19 20 the question was asked, about writing the word "solely."

21 Do you recall that?

22 A Yes.

23 Q And what did you mean by "sole" -- why was  
24 "solely" important in your response?

15:19 25 A Because, as I explained in my Declaration, and

15:19 1 earlier here today --

2 (Telephone interruption.)

3 THE WITNESS: Sorry, this is one of those  
4 clients that won't let me retire.

15:20 5 Because if -- if -- I think it's important

6 because, again, going back to my issue of, you know,  
7 money's fungible, if -- if -- if the underlying  
8 investments are making money and that money is coming

9 into a bank account and new investor money is also going

15:20 10 into that bank account, then I don't think it's improper  
11 that that money is commingled.

12 On the other hand, if there is no other money  
13 coming in from any other source, then I would -- It's my  
14 opinion that that would be improper.

15:20 15 Q So any other source -- Let me follow up on  
16 that.

17 Does it matter what kind of source the  
18 other -- Let me rephrase.

19 So could -- So what your testimony is is that,  
15:20 20 if new investor funds are put in the same bank account  
21 as any other source of funds, that bank account could be  
22 used to -- to make payments to previous investors?

23 MS. WARDEN: Objection. Mischaracterizes  
24 prior testimony.

15:21 25 MR. HULINGS: I'm asking him what his

15:23 1 investors could be considered expenses of the fund under  
2 the Company Advance section; is that right?

3 A I see -- I see where you're going.

4 MS. WARDEN: Objection. Mischaracterizes  
15:24 5 testimony.

6 A I think it goes back to the issue of  
7 whether -- what's the sole -- what -- what -- what is --  
8 where is the sole source of the money.

9 Q So if the Company Advance is placed in the

15:24 10 same bank account as other revenues, could that bank  
11 account be used to pay new -- pay previous investors?

12 A If there's a reasonable expectation that the  
13 assets are paying dividends or paying interest or  
14 paying, then -- then yes.

15:24 15 Q Is it a reasonable expectation that the assets  
16 are paying dividends?

17 MS. WARDEN: Objection. Vague.

18 BY MR. HULINGS:

19 Q I haven't even finished the question yet.

15:24 20 But let me -- Could it be -- is it -- would it  
21 be acceptable if there is a reasonable expectation that  
22 the assets will at some point pay dividends?

23 MS. WARDEN: Same objection.

24 A This is a very slippery slope. I mean, I --  
15:25 25 I -- I suppose it's possible that you could do that.

15:35 1 A Oh, yes. Yes.

2 Q So the -- to your knowledge, the only source  
3 of funds at the beginning for the 575 Fund was new  
4 investor money; is that right?

15:35 5 A Yes. I addressed this in an email.

6 Q All right. And you had that knowledge before  
7 you told Mr. Mueller that the 575 PPM had been approved?

8 MS. WARDEN: Objection. Asked and answered.

9 A Yes.

15:35 10 Q And so you knew that the 575 Fund had no funds  
11 in which to pay the monthly payments to 575 P investors,  
12 other than new investor funds; is that right?

13 MS. WARDEN: Objection. Leading. You just  
14 have to give me a couple seconds to do the objections.

15:35 15 Leading. Mischaracterizes prior testimony.  
16 Calls for speculation.

17 BY MR. HULINGS:

18 Q None of those are valid so you can answer.

19 MS. WARDEN: Object to that.

15:36 20 BY MR. HULINGS:

21 Q We've had a lot of depositions together, so  
22 we --

23 A Yeah, I get it. I get it. This is my first  
24 and on -- and only.

15:36 25 Q Let me -- let me actually start that over. I

15:37 1 A Yes.

2 Q So when you -- when you are telling  
3 Mr. Mueller that the 575 is done, what are you  
4 communicating to him?

15:37 5 A That the PPM is -- is completed and -- and  
6 fulfills his obligation on -- under the law.

7 Q So in the next sentence, it says, your job is  
8 to make sure it is compliant with the law and  
9 disclosures are adequate.

15:37 10 A Correct.

11 Q So are you communicating to Mr. Mueller that  
12 the 575 PPM is compliant with the law and the  
13 disclosures are adequate based on the information  
14 available to you at the time?

15:38 15 A Yes.

16 MS. WARDEN: Objection. Asked and answered.

17 BY MR. HULINGS:

18 Q Okay. And that was as of September 1st, 2015,  
19 correct?

15:38 20 A Yes.

21 Q All right. So prior to that date, you knew  
22 that the 575 Fund had no assets?

23 MS. WARDEN: Objection. Asked and answered.

24 MR. HULINGS: Yeah. You objected so I'm  
15:38 25 repackaging it to -- to deal with the objections.

16:03 1 A It -- it -- this reminds me that, yes, there  
2 was originally a -- a debenture fund.

3 Q So the first sentence says, "Here are the  
4 final docs for the five-year fund."

16:03 5 A Do you see that?

6 A Yes.

7 Q So when your -- when you send final docs to a  
8 client, what are you communicating to the client?

9 MS. WARDEN: Objection. Vague.

16:03 10 A That -- that we -- we have reviewed this and  
11 we -- and we feel that it's appropriate and adequate  
12 and -- and that you can start selling it.

13 Q So this email is representing to the  
14 recipients that it is your legal opinion that this  
16:04 15 document complies with the securities laws based on the  
16 information available to you; is that right?

17 A Yes.

18 Q Okay. And -- and part of the purpose of your  
19 representation was to review documents that are being  
16:04 20 provided to investors to ensure that they comply with  
21 the securities laws; is that right?

22 A Yes.

23 Q And that includes ensuring that -- Does that  
24 include ensuring that there -- no statements in these  
16:04 25 documents were materially misleading, based on the

16:04 1 information available to you?

2 A Yes.

3 Q If you -- Was it your practice that, if you  
4 saw some language in a PPM that you thought was  
16:05 5 inappropriate or misleading, would you inform your  
6 clients of that fact?

7 MS. WARDEN: Objection. Calls for  
8 speculation.

9 A Yes.

16:05 10 Q And during the course of your representation,  
11 or in the course of the time working with Mr. Mueller,  
12 you -- did you send him multiple drafts of PPMs that  
13 included changes that you were recommending?

14 A Yes.

16:05 15 Q To your knowledge or memory, did Mr. Mueller  
16 ever refuse to incorporate one of your proposed changes  
17 into a PPM?

18 MS. WARDEN: Objection. Vague as to "refuse."

19 A I -- I -- I -- I don't believe so, no.

16:05 20 Q All right. Did -- Do you recall whether these  
21 documents were drafted based on the draft provided by  
22 the Texas lawyer?

23 A You know, I honestly can't answer that because  
24 I -- I just remember that there was -- that I -- we'd  
16:06 25 gotten a draft and we reviewed the draft, and we felt

16:16 1 to your clients saying it's been approved, you're  
2 communicating to them that they can spend money in a  
3 manner that is consistent with the representations in  
4 the PPMs?

16:17 5 MS. WARDEN: Objection. Leading. Misstates  
6 the evidence.

7 BY MR. HULINGS:

8 Q How do you misstate the evidence? I'm reading  
9 the document. I don't know.

16:17 10 A I was going to say, I don't know.

11 Yeah. I think the answer to your question is,  
12 yes. We're saying -- Again, remember this is business  
13 of the company.

14 Q Right.

16:17 15 A So this is the general business model of the  
16 company. And this is what we're trying -- This is what  
17 we're going to try to accomplish as a company --

18 Q Yes.

19 A -- is create this portfolio.

16:17 20 Q And so your understanding of what you were  
21 communicating to your clients was that they could spend  
22 a particular investor's money in -- in -- that didn't --  
23 Let me rephrase.

24 It was your -- what you're communicating to  
16:17 25 your clients, based on this document, is that they could

16:17 1 spend a particular investor's money in a way that didn't  
2 comply with the 60, 20, 10, 10 breakout?  
3 MS. WARDEN: Objection. Mischaracterize prior  
4 testimony.

16:18 5 BY MR. HULINGS:

6 Q I'm asking for your testimony now.  
7 A Okay. Okay. As -- as long as in -- as long  
8 as it mirrors this in totality, all of the investor  
9 funds meet this criteria.

16:18 10 Q Okay.

11 A And that's -- that's perfectly okay.

12 Q All right. Okay. So the next section down  
13 says Life Settlements. Do you see that?

14 A Yes.

16:18 15 Q So at some point during the time you worked  
16 with Mr. Mueller and Mr. Hagan, were they selling shares  
17 in actual life policies, do you recall?

18 A I -- I do recall, and -- and the answer is  
19 yes. There were a number of -- in -- in -- throughout  
16:18 20 that time period -- Well, there were companies that were  
21 in the business of buying viaticals. I don't -- I  
22 don't -- I don't want to get into a lengthy description  
23 of the difference.

24 But -- so this -- so this industry started  
16:19 25 during the AIDS crisis --

16:22 1 designing the next best greatest thing in pinball  
2 machines. And that this would be a cash flow that would  
3 offset this problematic issue of about when people die.

4 We also talked a lot about, like, real estate  
16:23 5 investments and other -- and other kinds of investments.  
6 But that's what he thought.

7 Q So by the time he raised the idea of investing  
8 in pinball, had you been working together for a couple  
9 years by this point?

16:23 10 A Yeah, probably. Yeah.

11 Q So you had many conversations with Mr. Mueller  
12 over the phone and -- and at least one in person?

13 A Yes.

14 Q And based on those prior communications, did  
16:23 15 you think that Mr. Mueller was -- genuinely believed  
16 that he could make Pinball profitable when he was  
17 telling you this?

18 MS. WARDEN: Objection. Vague and ambiguous  
19 as to "genuinely believed" and "profitable."

16:23 20 A He believed that.

21 Q He told you that he thought he could make  
22 Pinball -- the Pinball business work?

23 A Yes.

24 Q And based on your experience with him, did you  
16:24 25 believe that he believed that he could make it work?

16:24 1 MS. WARDEN: Objection.

2 MR. NASSE: Speculation.

3 MS. WARDEN: Confusing.

4 A Well, I believed that he believed.

16:24 5 Q In other words, this wasn't -- this was a real  
6 business venture?

7 A Well --

8 MS. WARDEN: Objection as to -- Vague and  
9 ambiguous as to characterization.

16:24 10 A It was he believed that this was a legitimate  
11 business that could produce cash flow and income.

12 Q Okay. So that's -- Coming back to the  
13 document in front of us, that's not part of this  
14 document?

16:24 15 A It is not.

16 Q Okay. All right. Let's go to page -- All  
17 right. Let's see. Let's go to Page 14. I'm sorry.

18 A I -- I see -- I see you paid for the expensive  
19 stock paper.

16:25 20 Q I didn't. You know, I -- I -- we've done a  
21 lot of these depositions remotely, and I would have been  
22 fine doing this one remotely. You've got all your  
23 documents there and you can pick them on the fly.

24 A Yeah. Right.

16:25 25 Q And you realize you need a document after

16:29 1 MS. WARDEN: Which investors?

2 MR. HULINGS: Are you serious? Okay.

3 BY MR. HULINGS:

4 Q So do you understand --

16:29 5 MR. NASSE: Investors in this fund? Not the  
6 funds that were actually in this case.

7 MR. HULINGS: Okay. Yes. That's --

8 BY MR. HULINGS:

9 Q Do you understand that when -- when --

16:30 10 A Yes.

11 Q -- you provide a PPM --

12 A Yes.

13 Q -- to an investor, you're -- to someone who  
14 gives --

16:30 15 A The debenture holders.

16 Q Thank you.

17 A The debenture holders.

18 Q All right. So you're communicating to the  
19 debenture holders that provide money to this fund --

16:30 20 A Yes.

21 Q -- based on this PPM?

22 A Yes.

23 Q That you -- that this PPM communicates to them

24 that there will be salaries paid out of the money that

16:30 25 they provide?

16:30 1 MS. WARDEN: Objection. Evidence speaks for  
2 itself.

3 BY MR. HULINGS:

4 Q You can answer.

16:30 5 A Yes.

6 Q Okay. And is -- Would it be inconsistent in  
7 your -- with the language in the PPM that one of the  
8 people receiving the salaries would be Robert Mueller?

9 A It would not be inconsistent.

16:30 10 Q Okay. All right. All right. Let's -- I'm  
11 going to show you a new exhibit. This one is not on  
12 fancy paper. Call this Exhibit --

13 THE REPORTER: 103.

14 MR. HULINGS: -- 103. There you go. There  
09:43 15 you go.

16 MS. SANSALONE: Thanks.

17 MR. HULINGS: Mind if I keep one for a second?

18 MS. SANSALONE: No, you can. We're good.

19 (Deposition Exhibit 103 was marked for  
16:31 20 identification.)

21 BY MR. HULINGS:

22 Q All right. Okay. Do you recognize this  
23 document?

24 A No.

16:31 25 Q Take -- take a second to review it.

17:07 1 A Let me see. Is this covered by -- by the  
2 waiver?

3 Q It's -- I think it -- I think it actually --

4 A It was not successful.

17:07 5 Q Okay.

6 A And he was a charlatan.

7 Q Got it. Jacob.

8 A Jacob.

9 Q All right. Thank you.

17:07 10 Q All right. Then the last bullet says, "You  
11 and I have discussed, and you know we need, immediate  
12 income to cover immediate expenses. It will take years  
13 for the life settlements in the other funds to pay off  
14 to accomplish this, or we pay. These tech projects can  
17:08 15 not only provide the immediate income to cover admin  
16 expenses in the short term, but they take the burden off  
17 the other fund balance sheets."

18 A Do you see that?

19 Q I do.

17:08 20 Q So that's -- Is that also consistent with your  
21 communications with him about the idea of the Tech Fund  
22 providing short-term income?

23 A It is consistent with what he believed.

24 Q Okay. All right. Let's get to the heart of  
17:08 25 this.

17:39 1 context.

2 A I -- I would agree with your statement, by the  
3 way.

4 Q Yes.

17:39 5 A But what I'm saying here is, you know, there's  
6 been an inquiry and you have to answer truthfully. It  
7 has nothing to do with the PPM, per se.

8 Q Okay. So a little further on, this wasn't  
9 asked. Let's -- let's talk about this. It says, "On  
17:40 10 the compensation issue again the question is there to  
11 determine whether a significant amount of the principal  
12 went to management."

13 Do you see that?

14 A Yes.

17:40 15 Q "Indirect payments are okay if you mean that  
16 you draw a salary from dR and the funds paid dR for  
17 management."

18 Do you see that?

19 A Yes.

17:40 20 Q Let's stop there before we go on to the next  
21 thing.

22 So you're telling Mr. Mueller that the  
23 575 Fund, for example --

24 A Right.

17:40 25 Q -- could pay a fee to a different deeproot

17:40 1 entity --

2 A Yes.

3 Q -- and that that deeproot entity could pay

4 Mr. Mueller a salary?

17:40 5 A Yes.

6 Q All right. And that is your understanding of

7 how Mr. Mueller was getting paid at this time, based on

8 his representation to you?

9 A Okay.

17:40 10 Q Well, I guess that --

11 A I mean, that's -- I mean --

12 Q That's what's in this email.

13 A My -- Again, what I'm saying is this could --

14 this could be one way to do it. Yes.

17:40 15 Q Okay. And then the next line says, "While  
16 it's an over generalization, the hallmark of a Ponzi  
17 scheme is large portions of the principal payments going  
18 to pay fees and salaries."

19 Do you see that?

17:41 20 A Yes.

21 Q And then you said, "Remind me again what the  
22 575 is. I thought you wanted to replace them with the  
23 FIFO deal."

24 We'll get to that in a second.

17:41 25 A Yeah.

17:49 1 MS. WARDEN: Objection. Assumes fact -- I  
2 mean -- Sorry. Calls for speculation. Leading. Vague  
3 and ambiguous. Asked and answered.

4 BY MR. HULINGS:

17:49 5 Q Like I said, I don't care. But go ahead.

6 A No.

7 Q Okay. All right. All right. So this is  
8 August 21, 2015, correct?

9 A Yes.

17:49 10 Q And by this point, you knew that Mr. Mueller  
11 was taking a salary indirectly?

12 MS. WARDEN: Objection.

13 BY MR. HULINGS:

14 Q So the --

17:49 15 MS. WARDEN: Vague as to "indirectly."

16 BY MR. HULINGS:

17 Q So he knew that --

18 A I -- I don't -- I -- I -- I'm not -- I -- I --  
19 I'm not prepared to say I knew that he was. What I did  
17:50 20 know is that he could.

21 Q Okay. All right. So your legal advice to  
22 Mr. Mueller in -- and when you approved of the PPMs for  
23 the dGRD Fund and the 575 Fund, your -- the legal  
24 opinion you communicated to Mr. Mueller was that he  
17:50 25 could take a salary that was from the funds provided --

17:50 1 MS. WARDEN: Objection.

2 MR. HULINGS: Hold on.

3 BY MR. HULINGS:

4 Q -- from the funds provided by investors by the

17:50 5 575 or dGRD Funds?

6 MS. WARDEN: Objection. Mischaracterizes

7 prior testimony.

8 MR. HULINGS: It isn't prior testimony. It's

9 his current testimony.

17:50 10 MS. WARDEN: Okay.

11 BY MR. HULINGS:

12 Q Go ahead.

13 A Providing it was reasonable.

14 Q Okay.

17:50 15 A I hate -- I hate to get off on a tangent here,

16 but, you know, we're -- we've all been acting as if you

17 open the SEC regulations and it says, Here's what a PMM

18 must have. That -- that -- there is no such thing.

19 What we put in a PPM is based on 100 years of

17:51 20 litigation.

21 Q Right. Yeah.

22 A That -- and that's what forms what a

23 securities lawyer feels is necessary to put in a PPM.

24 So -- so no, there is no regulation that says -- As

17:51 25 I said earlier, you don't even need a PMM. You just

17:51 1 need a Subscription Agreement. So we do our best to try  
2 to put in all the information that would be material to  
3 an investor making a decision.

4 Q And -- and your opinion that you communicated  
17:51 5 to Mr. Mueller was that the PPMs for the 575 Fund and  
6 dGRD Fund adequately disclosed that he would be  
7 receiving compensation in some form?

8 MS. WARDEN: Asked -- Objection. Asked and  
9 answered.

17:51 10 A Yeah. I don't -- Again, I don't -- it doesn't  
11 speak to that specifically. But implicitly, yes.

12 Q Okay.

13 A Implicitly. Again, the reason for -- the  
14 reason to go to the equity idea was that -- was that he  
17:51 15 owned some equity and they owned some equity, and all  
16 boats rise.

17 Q Okay. All right. Let me kind of skip ahead  
18 then.

19 Do you -- The PPMs for both the 575 Fund and  
17:52 20 the dGRD Fund disclosed that some of the funds would  
21 go -- be transferred in between different deeproot  
22 entities; is that fair?

23 MS. WARDEN: Objection. Vague.

24 BY MR. HULINGS:

17:52 25 Q Do you understand the question?

18:08 1 calculated consistent with this disclosure, Exhibit 36?

2 A I do not recall such a conversation.

3 MS. WARDEN: No further questions.

4 MR. HULINGS: I do have one redirect on that.

18:08 5 FURTHER EXAMINATION

6 BY MR. HULINGS:

7 Q Did you consider it part of your  
8 responsibilities as Mr. Mueller's lawyer to direct him  
9 as to how he should calculate the value of his asset  
18:08 10 portfolio?

11 A Did I consider it?

12 Q I can -- I can simplify it, if you want me to.

13 A "Did you consider it part of your..."

14 I -- I -- I believe it self-explanatory.

18:09 15 Q And what do you --

16 A That -- that 45 percent of the assets -- We're  
17 going to limit these capital acquisitions of internal  
18 affiliated investments to 45 percent.

19 Q And that doesn't mean that 45 percent of every  
18:09 20 investor dollar that comes in --

21 A No. It means 45 percent of the total amount  
22 of investments made is the limit.

23 MR. HULINGS: Okay. No further questions  
24 until trial.

18:09 25 THE WITNESS: I'm not going.

1 CERTIFICATE

2 State of Ohio :  
3 County of Franklin:

4 I, Susan L. Coots, Notary Public in and for  
5 the State of Ohio, duly commissioned and qualified,  
6 certify that the within named DENNIS J. CONCILLA was by  
7 me duly sworn to testify to the whole truth in the cause  
8 aforesaid; that the testimony was taken down by me in  
9 stenotypy in the presence of said witness, afterwards  
10 transcribed upon a computer; that the foregoing is a  
11 true and correct transcript of the testimony given by  
12 said witness taken at the time and place in the  
13 foregoing caption specified.

14 I certify that I am not a relative, employee,  
15 or attorney of any of the parties hereto, or of any  
16 attorney or counsel employed by the parties, or  
17 financially interested in the action.

18 IN WITNESS WHEREOF, I have set my hand and  
19 affixed my seal of office at Columbus, Ohio, on this  
20 18th day of July, 2023.

21 

22 SUSAN L. COOTS, Notary Public  
23 in and for the State of Ohio and  
24 Registered Professional Reporter.

25 My Commission Expires January 10, 2025.